



Planning Department

TOWN OF ACTON
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June 30, 2009

Mr. Leo Bertolami
Old Mill Development Trust
&
Autoplex III, LLC
6 Proctor Street
Acton, MA 01720

Re: Application for ANR Plan Endorsement –61 & 67-71 Powder Mill Road
Plan by Acton Survey & Engineering, Inc.
Plan Date: June 18, 2009

Dear Mr. Bertolami:

This is to inform you that on behalf of the Town of Acton Planning Board I deny the above referenced application for ANR Plan endorsement for the following reasons:


1. The proposed Plan does not show the delineation of wetlands on the proposed lots as required in section 3.1.2.1.n) of the Subdivision Rules and Regulations.
2. The line between the proposed Canoe Landing Parcel and Parcel A is labeled as "Lease Line". It is unclear what this Lease Line refers to. To the best of my knowledge, the area on the proposed Canoe Landing Parcel north of the conservation restriction line is the Public Access Easement for the canoe. The Public Access Easement extends to the river's edge. The plan should reflect the entire easement as previously recorded.
3. I am perplexed at the discrepancies between this plan and the recorded plan 1510 of 2004 for the same area. Distances do not match.
4. The existing lot line between Town Atlas parcels 59 and 59-5 is not shown.
5. Proposed Lot 1 would be a long narrow lot that shows proposed frontage on Powder Mill Road; from there the proposed Lot 1 follows downstream along the Assabet River to the Concord town line; at the town line it turns southwesterly to an area of the proposed lot that is labeled "unrestricted area", i.e. the buildable area on the lot.
 - a. Based on the review of the Town's wetlands maps, it appears that extensive wetland areas traverse the entire width of the proposed Lot 1 between the "unrestricted area"

and the proposed frontage on Powder Mill Road. The wetlands extend possibly over the entire width of the proposed lot along the Assabet River and then again over the entire width of the proposed lot along the Concord town line for a distance of 250-300 feet. There is no Conservation Commission Order of Conditions that would specifically allow an access driveway.

- b. A recorded conservation restriction and public access easement extends over the entire area of proposed Lot 1 except for the unrestricted area. This document prohibits the construction of roads, driveways, buildings, etc.
- c. Except for the 30 most westerly feet, the proposed frontage on Powder Mill Road is on a MassHighway bridge layout, and is physically at the bridge and its abutment. MassHighway may also have a no-access restriction on its layout.

For these reasons it appears that the proposed frontage for proposed Lot 1 is illusory and that signing of the plan as an "Approval Not Required" (ANR) plan is not warranted. *Gates v. Planning Bd. of Dighton* (48 Mass.App.Ct. 394, 722 N.E.2d 477; Mass.App.Ct., 2000; January 04, 2000) provides the most recent guidance on how to evaluate frontage when wetlands are present. There is other case law on legal and physical obstructions (e.g. limited access highway; access restriction; embankments; etc.) Whether the plan would qualify for Subdivision approval remains to be seen.

Sincerely,



Roland Bartl, AICP
Planning Director

cc: Acton Survey & Engineering
Engineering Department
Planning Board
Town Manager

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